

# The Legal and Judicial Reform during the Renovation Period in Vietnam

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## I. The Reform of the Vietnamese Legal System

Since the "Doi moi" Policy was carried out in Vietnam in 1986, we progressively have been abolishing the bureaucratic centralized economic management and building the multi-sectoral commodity economy regulated by the market mechanism. The 1992 Constitution of the Socialist Republic of Vietnam officially provides the construction of the market economy in Vietnam. The Vietnamese State has striven to build a Jurisdictional State of the People and has implemented the policy on the international and regional integration. In that context, the role of the law is being heightened.

The Law during the social renovation period in Vietnam deeply attached to the new task of the State and closely associated with politics. It is the fact that the law not only plays the "Service" role but also is use as the symbol of value of the sound policies.

The Vietnamese Law at present performs the function to establish the minimum sphere of power and define adequately the rights for the people those are under the management in order to prevent false interventions, abuse authority and oppression upon them. To meet this demand, our State has set up the Administrative Courts and the Economic Courts belonging to the People's Court system. And thus, justice and democracy - the two legal fundamental principles, are essential basis for the activities of the State and the whole legal system, which are regulated in the constitutional law, the administrative law, civil law, labour law, economic law, criminal law, criminal procedure, etc.

It is important to apply the law as the "Service" tool for the Vietnamese market in order to *create the equal legal position within the traders*. Our 1992 Constitution (Article 22) provides the primary legal basic for this matter. Furthermore, the Congress

of the Vietnamese Communist Party held at the beginning of the year 2001 will put emphasis on every economic sector that is a component element of our economy.

Keeping up the regular operation market, it needs to *undertake the essential conditions for the market*. Primarily, that requires to create and maintain a fundamental infrastructure for the production. It is vital for productive activity, which is known as the service, the information service, the prediction, the advertising service, the insurance, the intermediary, the credit, the payment, etc. *Those mentioned are the infrastructure of the market*.

The role of the law on conducting the market in the transferred economic period is concretized into the following directions :

**a) The regulated extent : Provisions are immediately provided to create the general legal situations for the establishment and activity of the market.**

For this question, we are building the long term legislative strategy and promulgating the laws adapted the needs of the market economy. For example, the new promulgated laws will be more specific and of clear-cut; promulgating the under-legal documents is restricted; the regional and international intergrations are speeded up; the priority is to undertake the agreements with the other members of ASEAN and APEC and to step up the pace of getting admitted to the WTO.

**b) Continually perfecting the internal laws and the law on foreign investment creates the general legal basis for all the enterprises.**

In June 2000, the National Assembly of the Socialist Republic of Vietnam amended the Law on Foreign Investment in Vietnam, which establishes the more favorable legal environment for the foreign investors who want to invest in Vietnam. The new amendment and supplement in the Law on Foreign Investment are shown in the following aspects:

**Firstly**, one of the things that the foreign investors pay much attention on is how to reduce the risk in business to the lowest level. The Law on Foreign Investment in Vietnam is amended to allow the enterprises with foreign-owned capital to buy foreign currency at the Commercial Banks for irregular exchange or other exchange permitted;

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to strengthen the measures, assuring the balance of foreign currency for some special investment projects; to give favourable conditions for enterprises to open a bank account in the foreign countries and use it and to mortgage the value of the land use right; to define more clearly the responsibility of compensation and site clearance and to apply irretroactive principle for ensuring the interest of investors if there is a legal amendment to implement the guarantee and assure the investment of the important projects; to provide the flexible mechanism in applying the external laws and settling the disputes in accordance with international customary laws.

**Secondly**, the law widens the self-control right in management and business operation of the enterprises with foreign-owned capital and abolishes the inessential intervention of the State in their regular actions. At present, the laws intend to be amended making the enterprises with foreign owned capital and Vietnamese enterprises closer and establishing the equal legal basis on management for both forms in accordance with the provisions of the current law on enterprises and the international customary laws. The law restricts the sphere applied "being of one mind" principle in management and activity of the joint-venture enterprises, and extends the right of initiative of the investors in selecting the investment forms.

**Thirdly**, applying the foreign laws is regulated as a completely new norm: "Foreign investment in Vietnam is abided by this law and the concerned provisions of the Vietnamese laws. In case, Vietnamese laws have no provisions for a particular situation, the parties are able to come to an agreement in a written contract to apply the foreign laws, for which this application are not bound to oppose the fundamental principles of the Vietnamese laws".

**c) Establishing the legal basis adapted more suitably to the market for the credit and banking system.**

We have promulgated a lot of legal documents which regulate the activities of the State Banks and Credit organs in order to construct and to implement effectively the national monetary policy; to heighten the State administration on currency and the banking operations; to develop the multi-sectoral market economy under the control of the State; to assure the interest of the State and protect the legitimate rights and interest of organizations and individuals; to ensure the credit organs to operate strongly, safely and effectively and to carry out the national monetary policy.

The Vietnamese State has policies that give priority to mobilizing the internal sources and make use of maximum of the external sources; that extent the credit investment and free all the productive capacity; that take advantage of the potentiality of all the economic sectors and ensure the decisive role of the state owned enterprises, the socialist orientation and the national sovereignty; that guarantee the financial system and national currency; that help developing the cooperation and integration into the World; that undertake the national industrialization and modernization; that meet the demand of social - economic development; and that ensure the national security and defense and improve its people's life.

**d) Conducting the capital market.**

At present, we are carrying out the equitisation of state-owned enterprises. The Article 1 of the Government decree N<sup>0</sup> 28/CP dated 7 March 1996 on turning the state-owned enterprises in to the shared companies is defined: The Equitisation is "to turn a state-owned enterprise into a shared company", This issue is defined more clearly in the circular N<sup>0</sup> 50 TC/TCDN of the Finance Ministry dated 30 August 1996: "Turning the state-owned enterprises into the shared companies (called equitisation) is a measure to change an enterprise owned by State into the one owned by multi-sectors, in which a portion is possessed by State".

After the pilot programme, on 7 May 1996 the Government promulgated Decree N<sup>0</sup> 28/CP and officially stimulated "turning the state-owned enterprises into equitised enterprises" and the aim of the equitisation is stated as: (i) Mobilizing capital (to be used for development and transferring the technology) from the executives and workers of enterprises as well as from domestic and overseas individuals and economic entities. (ii) The favourable conditions are given to the contributed capital owners and the enterprises' staffs to have their shares and to play their roles as the masters of their companies, which create the motive for running business effectively in those enterprises.

The equitisation of the state-owned enterprises is the huge policy of Vietnamese State and its Party. It was initially guidelineed and conducted by our Government in Pilot Programme in 1992 and up to 31 December 1998, 116 state-owned enterprises had been equitised in whole country, in the which there are 19 central enterprises, 90 local enterprises and 7 enterprises belonged to the General Company 91. Up to now, over 100 state-owned enterprises have registered to equitise their companies during 1999 - 2000

period.

**e) Conducting the activity of the insurance.**

In accordance with the policy on developing the market economy, the Government promulgated Decree N<sup>o</sup> 100/CP dated on 18 December 1993 on the insurance business. The Decree permits the multi-sectoral enterprises to take part in the insurance business.

Recently, after the foundation, some insurance companies quickly establish their branches and representative offices in many parts of the country and operate stably to meet the varied insurance needs of the customers. The existence of various typed insurance companies and the competition permitted by laws among them create the positive effects, make the proportion of insurance fees reasonable, reflect just cost of the insurance and give advantage to the customers who buy the insurance. The competition causes the good service of the insurance companies towards the customers is paid attention and the service now is better than it was when there was only one company operated.

At the same time, the foundation of the joint-venture insurance companies have been carried out between Vietnamese parties and foreign parties. When we have favourable condition, the companies with foreign-owned 100% capital will be permitted to operate.

**f) Creating the legal basis to fight effectively against the unwholesome business undertaken.**

Anti-monopoly and anti-unwholesome competition is a completely new question in Vietnam. Recently, Vietnam has no particular legal documents on anti-unwholesome competition or anti-monopoly. However, provisions for this matter; which are scattered in various legal documents, have established a wholesome competed environment and fought against abusing the superiority to control and threaten the market.

The stated laws against the illicit competition mentioned above derive from the fundamental principles of the Civil Law and due to a visibly increasing problem that requires the justice power to protect the equal competition, and thus the competition now becomes a specific area of laws. On the basis of the general principal provisions in

Constitution, the Civil Code of Vietnam is regulated the general fundamental principles, in which the basic principles of respect for state interest, public interests and the legitimate rights and interests of other persons (Article 2), respect for good morals and traditions (Article 4), respect for personal rights (Article 5) are provided. All the activities of the competition are bound to follow these basic principles. To violate the personal rights, to take full use of prestige to cause damage for others, to disparage, to coerce and threaten partners are all considered as the illicit competed deeds violating the basis principles of the Civil Code. The Trade Law of Vietnam concretizes those basic principles into the activities of traders, in which there are two articles (Article 8 and 9) related directly to the activities of competition.

Different from the law on anti-unwholesome competition, the law on anti-monopoly is said a new area of laws in Vietnam and this law seems to have no tradition. During the war, the economy was bought to a standstill, so the national capitalist had no chance and no conditions to develop that's why the capital concentration led to monopoly did not occurred.

The purpose for considering, permitting or registering the foreign trade contracts, contracts of transferring technology, issuance of Investment Licence and giving a permission for the direct competitive tender files of the foreign companies is to eliminate the unfavourable clauses for Vietnam. The first stamp of the law on anti-monopoly is found in provisions of the Civil Code (Articles 809 - 825) and they are concretized by Decree 45/1998/N§-CP dated 1 July 1998 on transferring technology. Article 13 of this Decree has provisions on eliminating and against competition. For example, the party who receives the technology is bound to buy particular materials, the dimension of production, consumer market and technology level of the receiving party is eliminated. When the National Office of Industrial Property of the Ministry of Science Technology and Environment looks into the contract of transferring technology and finds out any of its provisions that are limitations of unfair competitions, it will act the same functions with cartels in the world. The illicit competition and taking use of superiority in the Vietnamese market nowadays has been raising sharply, so researching, promulgating and implementing the law on competition and anti-monopoly become necessary. The recent regulations scattered in various legal documents have established the basic principles for a new future area of laws, the law on competition and anti-monopoly. If there is a stable law for competition, the tendency of "criminalize"

economic-civil disputes will be decreased and therefore, the interests of victims are protected and it will deter and educate the competitors to compete frankly and honestly, and for which the competed activities fully perform their economic functions. Lately we commenced to draft the law on anti-unwholesome competition and anti-monopoly.

**The law has an important role in implementing the social policy.**

The 1992 Constitution reflects a new pace of development of the Vietnamese society : *to institutionalize the social policy of the State* is to carry out a progressive, consistent social policy for people and placing people in the central position of the social economic strategy.

The social policies as well as any state policies, which can only be implemented and performed the most thoroughly and effectively when they are defined in the particular legal forms, are ensured to be carried out by adequate legal mechanism.

For meeting two those demands, the legal system of the State for social issues must be established as a legal institution that consists of rules governed various fields of the society, however, these social policies are applied connectedly together.

In recent years, the State has supplemented and promulgated new legal documents directly related to issues on the social policies. They are the 1992 Constitution, the Labour Code; Law on Health Care for the People; Law on Environment Protection, Land Law; some new legal documents on salary, social insurance, management of religious activities, fighting against the social evils, etc. All these legal documents include the new contents and directions for the social policies in our renovation period at present. However, the implementation now meets many difficulties. Some policies cannot be carried out because on one hand the solutions for those issues are not synchronous, thorough and consistent or the solutions for settling a particular problem do not suit for other matters of the social policies in general or implementing some of the social policies is not consistent with the implementing the economic policy or other policies of the State. On other hand the renovation for this area of law is an unsystematic style of work. Furthermore, there has no law to regulate many fields of the social policy. Perfecting the legal system for regulating the issues of the social policy intends to concretize the constitutional provisions and the effective legal mechanism is created to implement those regulations in the real life.



## **II. The Judicial Reform in Vietnam**

Nowadays, our State pays much attention to the judicial reform. The judicial reform lays out some important tasks during the process of building a jurisdictional State in our country.

Continuously building and perfecting the legal documents are the basis for the activities of the judicial organs in the judicial system.

### **Strengthening the system of judicial organs.**

First the jurisdiction of the People's Courts is re-delimited, then, step by step the jurisdiction of the District Courts is widened. The structure and activity of the People's. Procuracy are reformed with the intention to strengthen the prosecution and the judicial supervision. This renovation of the investigative organs tends to establish a unique system, so the recent dispersed system does not exist (At present we have the investigative organs of the Ministry of the Interior, the People's Procuracy and the Ministry of Defence).

The organs of legal enforcement and the reciprocal judicial organs are also reformed with the intention to train and to re-educate judges, court clerks, inspectors, procurators, notaries, experts and lawyers so that they have a good political quality, good morals, public-spirited and impartiality and good professional knowledge ensuring that mechanism is pure and strong.

The basic characteristic of the implementing legal organs of the State is that it is a system of institutions belonging to the State machine and this system performs the basic function of the State to protect the society on the basis of laws and legal principles. Only these organs present the state power to use the state enforced measures and the jurisdiction (of the civil case, criminal case, ...) is only of Courts.

### **The judicial system - a unique system of the proceeding process.**

This conclusion is based on the interactive and systematic relation within the processes and the social facts.

Article 127 of the 1992 Constitution stipulates a system of judicial organs and then defines:

*"At the local, establishing the suitable organizations of the people in*

*order to settle the breach of law and small disputes of the people stipulated by law".*

The Constitution regulates the role of jurisdiction only belonging to the courts: "The People's Supreme Courts, the Local Courts, the Military Courts and other courts defined by law are the judicial organs of the Socialist Republic of Vietnam" (Article 127). Article 72 of the Constitution (concretized in Article 10 of the Criminal Procedure Code) affirms "No person will be held guilty until a judgement of " Guilty "by the court has come into legal force". So the systematic and institutional characteristics of the judicial system themselves show the central role of courts (of jurisdiction) in the judicial system.

That role and position of the jurisdiction present firstly its legal characteristic of all the various measures which the society and the State use to settle the disputes and interest contradiction.

Because of that important role, progressively not only the civil disputes and criminal cases, but also the administrative, labour, economic and commercial disputes have been turned to the legal procedure of the courts.

- Role of intermediate conciliation in the judicial actions.
- Procedure for direct negotiation in the prosecution of the Vietnamese international arbitration.
- Criminal procedure.
- Court procedure for civil cases (Civil Procedure)
- Procedure for settling the economic cases (Economic Procedure)
- Legal Procedure of the Vietnamese international arbitration Centre to the Chamber of Commerce and Industry on Vietnam.

In our Country, at present, the Reform of the judicial system is carried out on the basis of the following principles:

- Strengthening more favourable and democratic procedures for citizens.
- Ensuring the fairness and justice in trial
- Ensuring the independence for the Judges.
- Strengthening the inspecting role of the People's Supreme Courts in which

there are the role to sum up - up the real trials and to give the direction for applying the laws.

In 1995, under the decision of the Minister of Justice, we set up the **Centre for Training Judges and other Judicial Office** as a Department of Hanoi Law University. After its foundation, the Centre held many courses for the judges of local courts to foster the judges' professional abilities, to specialise in settling the economic, labour and administrative cases. The participants of these courses who were the judges from Criminal or Civil Courts are now appointed to the new courts in the People's Courts system such as Economic Courts, Labour Courts and Administrative Courts. The Centre also organized a training judges course for the Provincial Courts secretary all over the country. There were over 100 learners in this in-service course. The Prime Minister promulgated Decision N<sup>o</sup> 34/1998/QĐ-TTg dated 10 February 1998 on establishing the **Training Judicial Offices School**. The Decision points out the school is situated in Hanoi, dependent on the Ministry of Justice and has task to train judges and other judicial offices in intensive and in-service forms. At present, the School is building its structure and organization to get ready for fulfilling its function and its task assigned. It continues the training judges course for over 100 learners who were changed from the Centre for Training Judges and Other Judicial Office. In the future, judges, lawyers, notaries, etc will be definitely trained here. Now in Vietnam, there is Court Professional School dependent on the People's Supreme Court. The School has tasks to foster and to improve the professional abilities and skills for the Judges in power.

Nowadays, we are carrying out the 2<sup>nd</sup> term of office on the judges appointment, grasping thoroughly the renovation spirit and the important significance of the regulation of the appointment and implementing seriously, strictly the process of selecting and appointing judges regulated by law. Up to now, the President has appointed 914 judges for the Provincial Courts (in which there are 48 chief-judges, 13 chief-judges ad interim, 110 deputy chief-judges) and 2265 judges, for the District Courts (in which there are 534 chief-judges and 485 deputy chief-judges). Those judges of the People's Local Courts who were selected and appointed by the President in comparison to the judges determined in the decision of the Standing Committee of the National Assembly are short of 1488 judges, in more details: at the provincial level 1118 there were 925, there are short of 193 (17%), at the district level 3515, there were 2220,

there are short of 1295 (36%).

**The activities of lawyers:**

The Bar association is established in order to give legal advice to the citizens and to the organizations regulated by the Constitution, by the Ordinance on Organization of Bar Association and other legal provisions of the Socialist Republic of Vietnam. The lawyers Association has task to protect the legitimate rights and interests of citizens and organizations, to ensure the Law and the Socialist regime. In Vietnam, lawyers work for a professional organization called the Bar Association.

Each province or city controlled by the centre or an administration at the same rank has a Bar Association. Bar Associations are encouraged, assisted, guided, controlled and supervised by the State in accordance with the provisions of the Ordinance on Organization of Bar Association and the detail provisions of the Regulation (promulgated attachment with Decree No 15-HDDBT dated 21 February by the Ministerial Council)

Since the Ordinance on Organization of Bar Association was promulgated, 61 Bar Associations have been established and they, step by step, have strengthened, stabilized and developed.

Bar Associations meet an important demand to give legal advice for citizens and organizations they contribute noticeably to protecting the legitimate rights and interests of the citizens and organizations, to implementing the principle to live and to work under the constitution and laws, and to building a jurisdictional State of and for the people.

To catch up with the new requirements for social development, the legal programme of the National Assembly laid down the amendment of the 1987 Ordinance on organization of Bar Association.

At present, the necessary formalities to be submitted to the Government for consideration and to the Standing Committee of the National Assembly to promulgate a new Ordinance have been quickly and fully worked out.

*Statistics of Bar Associations is estimated upto June 2000.*

Order	Bar Association	Branches	Lawyer							Qualification	
			Total	Province	Practising	Trainee	Specialized	Secondment	Teacher	Bachelor	Equal-qualification
1	In the whole country : 61	68	1471	321	1060	411	919	553	173	1125	218
2	%		100	22	72	28	62	38	12	85	15

*Source : Ministry of Justice*